

**REMARKS**

The November 14, 2005 Office Action has been reviewed and its contents carefully noted. Favorable reconsideration of this case is respectfully requested. Claims 1-6 are pending in this application and are currently rejected.

**Claim Rejections – 35 U.S.C. §103(a)****US 4,283,436 to Soeters et al. in view of Minifie**

The Examiner has rejected claims 1-6 under 35 U.S.C. §103(a) as being unpatentable over Soeters in view of Minifie for reasons of record.

Applicants respectfully traverse the Examiner's rejection as being improper in view of MPEP §2143 providing:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Applicants respectfully submit that a *prima facie* case of obviousness has not been set forth because the Office Action fails to show how the cited combination teaches or suggests all the limitations of claim 1.

Claim 1 requires that the liquid chocolate mass be mixed with liquid seed material obtained from the downstream process. Soeters teaches a chocolate making procedure which entails: stirring the mass to be tempered at 60°C, lowering the temperature to 30°C and seeding the mass with 0.1% of stabilized crystals from the original pre-conched mass, i.e., an upstream process stream. (Col. 14, lines 15-34). Minifie teaches seeding liquid chocolate at a temperature

of 32-33°C with solid chocolate shavings. (emphasis added) *See* Minifie at p.147. Neither of the references teach or suggest mixing a liquid chocolate mass with a liquid seed material, where the seed material is at a temperature above 30°C and is obtained from the cooled chocolate mixture as is presently claimed. The liquid seed material is obtained from the process downstream where undesired  $\beta'$  phase crystals are substantially not present.

Claim 1 requires that the liquid seed material be at a temperature above 30°C. Neither of the references disclose the seed material used being at a temperature above 30°C. Applicants respectfully point out that in citing Minifie, the Examiner incorrectly states that Minifie “clearly sets forth” seed material at a temperature above 30°C. *See* November 14, 2005 Office Action, p. 2. The seed material taught in Minifie are solid chocolate shavings that can’t possibly be at a temperature above 30°C because at that temperature the shavings would no longer be solid.

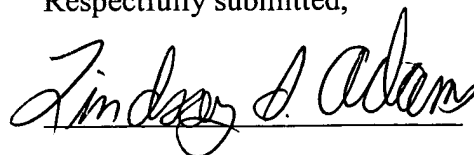
The Examiner asserts that the claims as written do not define the liquid seed material as being 100% liquid seed material. The Examiner further states that the claims are open to the consideration of a liquid seed material composition containing fat crystals with more than one melting point. However, contrary to the Examiner’s assertions, claim 1 specifically recites that the cooled mixture substantially does not contain any crystalline material in the  $\beta'$  phase. The  $\beta'$  phase crystals are those undesirable crystals in chocolate and are substantially not present at a temperature above 30°C. Therefore, solid shavings are inherently excluded because they are at a temperature below the indicated temperature and contain seed crystals in the  $\beta'$  phase.

In view of the facts presented, there is no teaching or suggestion in Soeters or Minifie to arrive at what is presently claimed. Therefore, the rejection is improper and should be withdrawn.

Moreover, even if there was some teaching or suggestion to arrive at the presently claimed invention, there would be no reasonable expectation of success. The present invention is directed to providing a method of chocolate preparation which during prolonged storage will exhibit less fat bloom or none at all. This is achieved by mixing a liquid chocolate mass with a liquid seed material, where the seed material is at a temperature above 30°C and is obtained from the cooled chocolate mixture as is presently claimed. The liquid seed material is obtained from the process downstream where undesired  $\beta'$  phase crystals are substantially not present. The Examiner's proposed combination would make achieving this end result impossible due to the presence of the undesired  $\beta'$  phase crystals in the solid chocolate shavings. Therefore, because there would be no reasonable expectation of success from the proposed combination, the Examiner's rejection is improper and should be withdrawn.

Applicants respectfully submit that this application is in condition for allowance. Early and favorable action is earnestly solicited. If any additional fee is due, the amount of such fee may be charged to Deposit Account No. 50-1145.

Respectfully submitted,



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